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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 516

J. T. ROBERTS, APPELLANT,

vs.

RICHLAND IRRIGATION DISTRICT ET AL., ETC.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED NOVEMBER 19, 1932

(37,213)

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IN SUPERIOR COURT OF BENTON COUNTY

No. 5607

J. T. Roberts, a Widower, Plaintiff,

v.

Richland Irrigation District, an Irrigation District; C. J. Barnett, W. A. Stockman, and W. C. McInnis, Directors of the Richland Irrigation District, an Irrigation District, and Harry Forsyth, Treasurer of Benton County, Washington; B. J. Pacius, Ira C. Hawley, and H. S. Hughes, County Commissioners of Benton County, Washington, Defendants

Complaint—Filed Jan. 12, 1931

Comes now the plaintiff herein and for cause of action against the defendants alleges:

I

That this plaintiff is and at all times herein referred to has been a resident of Benton County, State of Washington.

That Richland Irrigation District is an irrigation district, organized and existing under the irrigation district laws of the state of Washington, having its office and principal place of business at Richland, Washington; that C. J. Barnett, W. A. Stockman and W. C. McInnis, are the duly elected, qualified and acting board of directors of Richland Irrigation District; that Harry Forsyth is the duly elected, qualified and acting County Treasurer of Benton County; that B. J. Pacius and Ira C. Hawley and H. S. Hughes are the duly elected, qualified and acting County Commissioners of Benton County, Washington.

II

That on and prior to the first day of January, 1919, this [fol. 2] plaintiff was and at all times since has been and now is the owner of a certain tract of land situate in Benton County, State of Washington, more particularly described as follows, to-wit:

The Northwest Quarter of the Northwest Quarter (N. W. ¼ N. W. ¼) of Section Four (4), Township Nine (9), North Range Twenty-eight (28) East of the Willamette Meridian,

which land was, prior to the first day of January, 1919, occupied by this plaintiff and cultivated as a farm. That said real property was valuable for agricultural purposes, being an irrigated tract; that there was and is now appurtenant to it a valuable water right.

III

That on the 7th day of January, 1919, there was filed in the office of the County Commissioners of Benton County, Washington, a certain petition signed by the owners of land in said county, contiguous to or in the neighborhood of the real property owned by this plaintiff, praying for the formation of an irrigation district, to be known as Richland Irrigation District, and thereafter such steps were taken by said petitioners and by other persons that said district was organized by an order entered by the county commissioners of Benton County, on the 17th day of March, 1919, constituting and creating said Richland Irrigation District, and defining and fixing the territorial boundaries of said district, and that a copy of said order was filed in the office of the Auditor of said county on the 17th day of March, 1919. That in pursuance of the action of the board of County Commissioners, certain proceedings were had in the Superior Court for Benton County, State of Washington, and on February 25, 1930, a decree of confirmation was signed by the judge of said court confirming the organization and establishment of the Richland Irrigation District.

[fol. 3] IV

That the real property hereinabove described belonging to the plaintiff was included within the territorial limits of said irrigation district, despite the fact that this plaintiff did not join in said petition, and this plaintiff at all times did, by all appropriate means, object to the formation of said district, and to the inclusion of his lands within the territorial limits thereof.

That thereafter the board of directors of said irrigation district over the protest and without the consent of this plaintiff undertook to acquire, develop and improve certain ditches, flumes, water rights, canals, machinery, tools and appliances for the purpose of improving the existing facilities for irrigating the lands within said district, or creating new facilities therefor, and to issue the bonds of said district in payment therefor.

V

That said projected improvements, betterments and developments contemplated an expenditure in the sum of approximately $538,000; that for the purpose of meeting and providing for said expenditure, the board of directors called an election for the purpose of determining whether or not bonds of said district should be issued to pay the cost thereof; that in pursuance of the action of the board of directors, an election was held and a majority of the votes cast were in favor of the issuance of bonds to pay the cost of said improvements, and that by said special election, the board of directors were authorized to issue bonds in the sum of $590,000; that prior to and at said election the plaintiff herein objected to the authorization and issuance of said bonds.

[fol. 4]

VI

That pursuant to the authority of said election, the Richland Irrigation District did, on or about the first of July, 1920, issue and sell its bonds in the principal sum of $538,000, in the form prescribed by the laws of the State of Washington, bearing interest at the rate of 6 per cent per annum, payable semi-annually, and that said bonds and the proceeds thereof were used for the purpose of acquiring additional water rights and improving irrigation works and facilities serving the lands of this plaintiff and other lands within the district.

VII

That prior to the purchase of the additional water rights and the making of the improvements hereinabove referred to by said irrigation district, the real property with the appurtenant water rights and facilities, belonging to this plaintiff, hereinabove described, was of the reasonable

market value of $3,500. That immediately subsequent to the acquisition of said additional water rights and the making of said improvements and betterments by said irrigation district, and by reason thereof the value of said real *real* property and the water rights appurtenant thereto was increased in the sum of $350, or approximately $10 per acre of the irrigable portion of the above tract, making the total reasonable market value of said property immediately after the acquiring of said additional water rights, and the making of said improvements, in the sum of $3,850.00.

VIII

That no other benefits of any description accrued to this plaintiff or to the lands owned by him by reason of the acquirement of said additional water rights, the making of said improvements, or the expenditure of any funds by said district, in excess of the sum of $350.

[fol. 5]

IX

That by reason of the increase in the value of the land and water rights appurtenant thereto, by reason of betterments and improvements made by the district from the funds derived from the sale of the $538,000 bonds above referred to, benefits accrued to the above-described land in the sum of $350, and no more, and said real property thereby became liable to an assessment for the payment of said bonds in the sum of $350 and no more, with interest at 6 per cent on deferred principal assessments until paid. That said amount was collectible by the district, by means of assessments levied for the bond interest and retirement fund.

X

That the bonds issued for the purpose of meeting the expenses of acquiring additional water and improving existing facilities bore interest at the rate of 6 per cent per annum and matured in the following amounts in the respective years herein set forth:

Series	Amount	Date due
A	$29,500	July 1, 1931
B	35,400	July 1, 1932
C	41,300	July 1, 1933
D	47,200	July 1, 1934
E	51,100	July 1, 1935
F	57,000	July 1, 1936
G	62,900	July 1, 1937
H	58,200	July 1, 1938
I	61,000	July 1, 1939
J	94,400	July 1, 1940
	$538,000	

XI

That by reason of the fact that plaintiff's land was benefited in the sum of $350, and that by reason of the fact that bonds bearing interest at the rate of 6 per cent per annum, and retirable in accordance with the table above set forth, were issued to pay the costs of benefits, the plaintiff's land [fol. 6] was liable to assessment for said bonds in the sum of $350 plus interest at the rate of 6 per cent per annum for a period of ten years, plus interest at the rate of 6 per cent per annum on the unpaid balance of the plaintiff's liability during the period that the bonds matured. That the ultimate amount of the liability of the plaintiff's land for assessment for the bonds issued by the Richland Irrigation District was the sum of $560.00.

XII

That between the years 1920 and 1929, inclusive, the board of directors of the Richland Irrigation District, for the purpose of providing funds for the payment of interest and principal on the bonded indebtedness of the Richland Irrigation District, levied against this plaintiff's land, the following amounts for the respective years named:

1920	$60.40
1921	70.35
1922	93.80
1923	149.10
1924	144.90
1925	150.00

1926	150.00
1927	75.60
1928	183.00
1929	91.50

That plaintiff, for the purpose of protecting his title, and under threat of losing it, paid said assessments in full. That plaintiff's payments on assessments for interest and principal on the bonds referred to above aggregate the sum of $1,168.65 over the years named. That the plaintiff's payments have exceeded the amount for which his land is legally assessable for said bond interest and retirement, and that plaintiff's land and the water rights appurtenant thereto are no longer liable for assessment for that purpose.

XIII

That the board of directors of the Richland Irrigation District have made all preparations for and threaten to levy an assessment against the lands of the plaintiff here- [fol. 7] inabove described for the year 1931 in the sum of $757.53, and to cause a public record to be made of said assessment, thereby creating an apparent lien of record in said amount, upon the lands of the plaintiff hereinabove referred to. That the threatened levy of $757.53 is to be made upon a fundamentally wrong and illegal theory and basis, in this: That no part of said levy is made on account of or with reference to any special benefit accruing to the real property of the plaintiff hereinabove referred to. That said assessment has been levied for the purpose of creating a fund to take up or eliminate the deficiencies in the bond interest and bond retirement funds of said irrigation district, due wholly or in part to a failure of certain landowners within the district to pay assessments which have heretofore or will hereafter be levied against lands in said district belonging to such other persons.

That said directors of the Richland Irrigation District have stated to this plaintiff that it is their fixed policy and that they propose to assess and re-assess all delinquencies which have heretofore or may hereafter accrue against the lands of this plaintiff and other lands in the district which continue to pay their assessments, without delinquency, until the lands of this plaintiff, and the lands of other persons who have and who shall hereafter pay the assess-

ments levied, will create a fund sufficient to pay the entire outstanding indebtedness, and retire said bonds, both principal and interest, and that they propose to make such assessments without reference to the special benefits which have accrued to the real property of this plaintiff and any other landowners in the district who may continue to pay their assessments, but to be governed and determined in making said assessments solely by a consideration of the amount of money required to pay said indebtedness, principal and interest.

[fol. 8]

XIV

That the threatened assessment against lands of this plaintiff and all other persons similarly situated is equal to or greater than the gross income derived from the produce of this land and other respective tracts of land, and that it is in substantial excess of the net income derived therefrom. That the threatened assessment is equal to or in excess of one third the reasonable market value of said property and that further assessments on the same basis and theory for the year 1932 will exceed the total value of said property.

XV

The question of the rights of the plaintiff in this matter is one of common or general interest to many persons and this action is brought on behalf of the plaintiff himself and others similarly situated.

XVI

That in the event of the failure of this plaintiff and others similarly situated to pay said assessments, said directors threaten to foreclose said assessments and deprive him and them of title and ownership to said real property. That an assessment levied for the purpose and in the manner hereinabove described is illegal and void, based upon a fundamentally wrong theory and plan, and will result in creating an apparent lien of record against the real property herein described, constituting a cloud upon the title of this plaintiff, and that by reason of the threat to assess and re-assess all delinquencies now existing or which may hereafter accrue against said property in successive years, said real property is and will be de-

prived of all marketability and be made absolutely valueless; that the making of such an assessment and placing it of record will create a cloud upon the title of every landowner within said irrigation district, which can be removed only by the maintenance of individual suits to cancel said [fol. 9] assessments as to each tract of land resulting in a multiplicity of suits, which many of the residents of said district, because of want of funds, are unable to maintain. That the action of the board in imposing illegal assessments in the manner hereinabove described and in threatening to continue to levy all accrued and accruing delinquencies through the successive future years as herein stated, constitutes a confiscation of the lands of this plaintiff and the owners of other lands in said district similarly situated, depriving them of their property without compensation and without due process of law, and denying them the equal protection of the law. That if the defendants herein are not restrained from making such illegal and confiscatory levy, the plaintiff and others similarly situated will suffer irreparable damage.

XVII

That in the event the defendants herein levy said assessment, and spread it upon the records of Benton County, thereby creating an apparent lien against each piece of real property within the limits of said irrigation district, and said action is ultimately determined by this court to be illegal and void, it will be impossible to correct said record and to remove the apparent cloud on the titles to the real property in said district save by the maintenance of an individual suit to quiet title as to each of said properties; that no power resides in said board of directors of the Richland Irrigation District, or of the board of county commissioners of Benton County, or in the Treasurer of Benton County, to correct or rectify said record. That many persons within said district are without the funds or means of protecting themselves by instituting and maintaining such suits. That the board of directors are planning and threatening to place said assessment against the lands within one or two days from the date hereof, and that unless an order is immediately issued restraining their [fol. 10] action, the plaintiff herein and other persons similarly situated will suffer irreparable damage, and that

an emergency exists calling for the exercise by this court of its equitable powers in issuing an appropriate restraining order and injunction against said defendants and each of them, until such time as the matter can be presented and heard upon the merits.

XVIII

That plaintiff has no adequate, plain or speedy remedy at law.

Wherefore the plaintiff prays that the court enter its judgment decreeing:

1. That the plaintiff's land and water rights were benefitted in the sum of $350 by the improvements hereinabove referred to.

2. That the plaintiff has heretofore paid to the Richland Irrigation District all sums for which said land is liable by reason of the acquiring of properties, making of improvements, and issuance of bonds as in this complaint alleged.

3. That the land of this plaintiff is not liable to assessment by said irrigation district at this time for the purposes of paying interest or principal upon the bonds in said complaint referred to, in any sum or at all.

4. That the defendants and each of them be perpetually enjoined and restrained from attempting to make any assessment or levy against the lands of the plaintiff is this complaint described for the purpose of paying any sums on account of the principal or interest on the bonds in this complaint described.

5. That the title of the plaintiff in and to the above described land and the water rights appurtenant thereto be quieted as against any lien or claim of the holders of the [fol. 11] bonds above referred to, and the claim of the defendants that they have authority to levy assessments to provide revenue for the repayment of said bonds.

6. That the defendants and each of them be perpetually enjoined from assessing, levying or spreading upon the records of Benton County any assessment for the payment

of the interest or principal of said bonds against any particular tract of land within said district which will require the payment by the owner of said land of an amount in excess of the special benefit actually accruing to each particular tract of land by reason of the acquiring of water rights and making of improvements by the district, and the issuance of bonds as hereinabove referred to.

7. That there issue forthwith from this court a temporary restraining order, enjoining the defendants and each of them from assessing, levying, or spreading upon the records of Benton County, any assessments against the property of this plaintiff for the payment of principal or interest on the bonds hereinabove referred to, and that they be restrained from making and spreading upon the records of said district or of Benton County any assessment against any property in said district except for its share of the principal and interest on said bonds as determined by the special benefits accruing to each particular tract of land.

8. That a show-cause order issue directed to said defendants, and each of them, requiring them to appear in this court on a day and hour to be designated by the court to show cause why said injunction and restraining order should not be made and remain in full force pending final judgment in this cause.

9. For such other and further relief as may to the court seem equitable and just.

Venables, Graham & Howe, Albert Olsen, Attorneys for the Plaintiff.

Post Office Address-: Venables, Graham & Howe, Henry Building, Seattle, Washington; Albert Olsen, Federal Land Bank Bldg., Spokane, Washington.

[fol. 12] *Duly sworn to by J. T. Roberts. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 13] IN SUPERIOR COURT OF BENTON COUNTY

[Title omitted]

RESTRAINING ORDER AND ORDER TO SHOW CAUSE—Filed Jan. 13, 1931

Upon reading the verified complaint of the plaintiff, which has been filed in this matter, and on motion of R. J. Venables, one of the attorn*yes* for the plaintiff,

It is ordered that the defendants and each of them be and they are hereby enjoined and restrained from assessing, levying or spreading upon the records of the Richland Irrigation District, or Benton County, any assessment against any property in said District for the year 1931 for the payment of principal and interest on outstanding bonds, except for its share of the principal and interest of outstanding bonds as determined by the special benefits accruing to each particular tract of land including that of the plaintiff herein, as a result of the issuance of said bonds, until the further order of this Court. Bond fixed in the sum of $500.00.

It is further ordered that the defendants herein show cause before me at my chambers at the Court House, City of Prosser, County of Benton, on the 29th day of January, [fol. 14] 1931, at the hour of Ten o'clock A. M. of said day, why said restraining order should not be continued in full force and effect pendente lite and until a final decree is entered herein, and that a copy of this order be served upon said defendants and each of them at least three days before the time fixed for the hearing on the Show Cause Order herein.

Dated at Pasco, Washington, this 12th day of January, 1931.

Matt L. Driscoll, Judge.

[File endorsement omitted.]

[fols. 15-20] Bond on restraining order for $500.00, approved and filed January 13, 1931, omitted in printing.

[fol. 21] IN SUPERIOR COURT OF BENTON COUNTY

[Title omitted]

STIPULATION AS TO AGREED ORDER—Filed Feb. 5, 1931

It is hereby stipulated by and between the parties by their respective counsel, namely, Venables, Graham & Howe and Albert Olsen, for the plaintiff, Roberts, Mark Moulton for the defendant Richland Irrigation District, and the defendant C. J. Barnett, W. A. Stockman and W. C. McInnis, Directors of the Richland Irrigation District, Charles L. Powell for the defendants Harry Forsyth, Treasurer of Benton County, B. J. Pacius, Ira C. Hawley and H. S. Hughes, County Commissioners of Benton County, Washington, and Preston, Thorgrimson & Turner, for the interveners, J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden and H. E. Davenport, individually and as Trustees, as follows:

1. That the Court may make and enter herein an agreed order, a copy of which is hereto attached.

2. That said order may be signed by the Judge at any place within the Judicial District in which said cause is pending.

3. The parties hereto, including interveners, do not by [fols. 22-24] this stipulation waive any of their respective rights herein and this stipulation and the order based thereon is and shall be without prejudice to the rights of any of the parties hereto.

Venables, Graham & Howe, Albert Olson, Attorneys for Plaintiff. M. M. Moulton, Attorneys for Defendant Richland Irrigation District and Directors of Richland Irrigation District. Charles L. Powell, Attorney for Defendants Harry Forsyth, Treasurer of Benton County; B. J. Pacius, Ira C. Hawley, and H. S. Hughes, County Commissioners of Benton County. Preston, Thorgrimson & Turner, Attorneys for Interveners, J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden, and H. E. Davenport, Individually and as Trustees.

[File endorsement omitted.]

[fol. 25] IN SUPERIOR COURT OF BENTON COUNTY

[Title omitted]

ORDER MODIFYING RESTRAINING ORDER—Filed Feb. 5, 1931

This matter coming on duly and regularly for hearing on the 5th day of February, 1931, pursuant to that certain Order to Show Cause heretofore issued herein on the 12th day of January, 1931, returnable on the 29th day of January, 1931, at the hour of 10 o'clock A. M., which hearing was subsequently continued by a stipulation until the date hereof;

The plaintiff, appearing by its attorneys Venables, Graham & Howe, and Albert Olsen, the defendants, Richland Irrigation District, an irrigation district, C. J. Barnett, W. A. Stockman, W. C. McInnis, Directors of the Richland Irrigation District, appearing by Mark Moulton, their attorney, and the defendants Harry Forsyth, Treasurer of Benton County, Washington, B. J. Pacius, Ira C. Hawley, H. S. Hughes, County Commissioners of Benton County, Washington, appearing by their attorney, Charles L. Powell, Prosecuting Attorney for Benton County, and Interveners J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden, and H. E. Davenport, individually and as Trustees, appearing by their attorneys Preston, Thorgrimson & Turner, and the Court being fully advised in the premises, [fol. 26] Now, therefore, upon stipulation of the parties on file herein, it is hereby ordered as follows:

1. That that certain restraining order heretofore issued herein, on the 12th day of January, 1931, restraining the defendants and each of them from assessing, levying or spreading upon the records of the Richland Irrigation District or Benton County, any assessments against any property in said District for the year 1931, for the payment of principal and interest on outstanding bonds, except for its share of the principal and interest of outstanding bonds as determined by the special benefits accruing to each particular tract of land, including that of the plaintiff herein, as a result of the issuance of said bonds, be and the same is hereby dissolved as to all land and property in said Richland Irrigation District, except that certain tract of real property belonging to the plaintiff, and referred to in

Paragraph 2 of plaintiff's Complaint, on file herein, and that as to said tract it be continued in full force and effect pendente lite, that said defendants be and they are hereby enjoined from levying any assessment against the real property of the plaintiff described in the Complaint, for the payment of any indebtedness evidenced by the outstanding bonds of said District, principal or interest, until the further order of this court herein.

2. That this order shall be without prejudice to the right of the defendants to assess said lands for any sums for which it may ultimately be found liable to be assessed.

3. That this order is without prejudice to the rights of any of the parties herto, including interveners.

Matt L. Driscoll, Judge.

[File endorsement omitted.]

[fol. 27] In Superior Court of Benton County

[Title omitted]

Stipulation as to Intervention—Filed Feb. 16, 1931

It is hereby agreed by the above named plaintiff and defendants that J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden and H. E. Davenport, being the owners and holders of certain of the bonds issued by the defendant Richland Irrigation District set forth in the complaint herein, may intervene and be made parties to this action individually and as trustees, and as such intervenors that they may, if they see fit, file a demurrer to plaintiff's complaint before filing answer and complaint in intervention herein, and that the court may enter an order allowing them so to do.

Venables, Graham & Howe, Albert Olson, Attorneys for Plaintiff. M. M. Moulton, Attorneys for Defendant- Richland Irrigation District and Directors of Richland Irrigation District. Charles L. Powell, Attorney for Defendants Harry Forsyth, Treasurer of Benton County; B. J. Pacius, Ira C. Hawley, and H. S. Hughes, County Commis-

sioners of Benton County. Preston, Thorgrimson & Turner, Attorneys for Intervenors, J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden, and H. E. Davenport, Individually and as Trustees.

[File endorsement omitted.]

[fol. 28] In Superior Court of Benton County

[Title omitted]

Order Permitting Intervention—Filed Feb. 16, 1931.

Upon written stipulation entered into between the above entitled parties,

It is now ordered that J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden and H. E. Davenport, individually and as trustees, be permitted to intervene herein, and before filing answer and complaint in intervention to demur to plaintiff's complaint.

Done in open court this 14th day of February, 1931.

Matt L. Driscoll, Judge.

[File endorsement omitted.]

[fol. 29] In Superior Court of Benton County

No. 5607

J. T. Roberts, Plaintiff,

v.

Richland Irrigation District, an Irrigation District; C. J. Barnett, W. A. Stockman, and W. C. McInnis, Directors of the Richland Irrigation District, an Irrigation District, and Harry Forsyth, Treasurer of Benton County, Washington; B. J. Pacius, Ira C. Hawley, and H. S. Hughes, County Commissioners of Benton County, Washington, Defendants; J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden, and H. E. Davenport, Individually and as Trustees, Intervenors

DEMURRER OF INTERVENORS—Filed Feb. 19, 1931

Come now the above named intervenors and demur to the complaint of plaintiff herein for the following reasons:

1. That the plaintiff has no legal capacity to sue.

2. That there is a defect of parties plaintiff.

3. That there is a defect of parties defendant.

4. That several causes of action have been improperly united.

5 That the action has not been commenced within the time limited by law.

6. That the complaint does not state facts sufficient to constitute a cause of action.

Preston, Thorgrimson & Turner, Attorneys for Intervenors.

Copy of within demurrer received Feb. 18, 1931.
R. J. Venables, Attorneys for ——.

[File endorsement omitted.]

[fol. 30] IN SUPERIOR COURT OF BENTON COUNTY

[Title omitted]

DEMURRER—Filed Feb. 28, 1931

Come now the defendants, Richland Irrigation District an irrigation district, C. J. Barnett, W. A. Stockman and W. C. McInnis, Directors of Richland Irrigation District, an irrigation district, and demur to the complaint of the plaintiff herein for the following reasons:

1. That the plaintiff has no legal capacity to sue.

2. That there is a defect of parties plaintiff.

3. That there is a defect of parties defendant.

4. That several causes of action have been improperly united.

5. That the action has not been commenced within the time limited by law.

6. That the complaint does not state facts sufficient to constitute a cause of action.

M. M. Moulton, Attorney for Richland Irrigation District and C. J. Barnett, W. A. Stockman, and W. C. McInnis, Directors of Richland Irrigation District.

[File endorsement omitted.]

[fol. 31] IN SUPERIOR COURT OF BENTON COUNTY

[Title omitted]

DEMURRER—Filed July 2, 1931

Come now the defendants, Ira C. Hawley, B. J. Pacius, and H. S. Hughes, County Commissioners of Benton County, Washington, and Harry Forsyth, County Treasurer of Benton County, Washington, and demur to the complaint of the plaintiff on the ground and for the reason:

1. That said complaint does not state facts sufficient to constitute a cause of action against these defendants, or any of them.

Charles L. Powell, Attorney for Defendants Ira C. Hawley, B. J. Pacius, and H. S. Hughes, County Commissioners of Benton County, Washington, and Harry Forsyth, County Treasurer of Benton County, Washington.

Due service of the foregoing demurrer, together with receipt of true copy thereof, is hereby acknowledged this 24 day of February, 1931.

Venables, Graham & Howe, Albert Olson, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 32] Superior Court of the State of Washington for Adams, Franklin, Benton Counties

Matt L. Driscoll, Judge

Pasco, Washington, June 19, 1931.

Venerables, Howe & Graham, Attorneys-at-Law, Henry Building, Seattle, Washington.

Re Roberts vs. Richland Irrigation District, an Irrigation District, et al.

Gentlemen: Upon the authority of the Hartung, Clancey, and other cases, the court has decided to sustain the demurrer of the interveners, J. T. S. Lyle, et al.

An Order may be prepared for the Court's signature in accordance herewith.

Yours very truly, Matt L. Driscoll.

MLD:RW.

Filed Sep. 26, 1931.

E. O. Keene, Clerk, by L. Keene, Deputy.

[fol. 33] In Superior Court of Benton County

No. 5607

J. T. Roberts, Plaintiff,

v.

Richland Irrigation District, an Irrigation District; C. J. Barnett, W. A. Stockman, and W. C. McInnis, Directors of the Richland Irrigation District, an Irrigation District, and Harry Forsyth, Treasurer of Benton County, Washington; B. C. Pacius, Ira C. Hawley, and H. S. Hughes, County Commissioners of Benton County, Washington, Defendants; J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden, and H. E. Davenport, Individually and as Trustees, Intervenors.

Order Sustaining Demurrer and Judgment—Filed Sept. 10, 1931

This cause having come on to be heard before the Court on the 1st day of April, 1931, upon the demurrers of defendants and intervenors to the Complaint herein, plaintiff

being represented by Venables, Graham & Howe, and Albert Olson, his attorneys; and the defendants Richland Irrigation District, an irrigation district, C. J. Barnett, W. A. Stockman and W. C. McInnis, Directors of the Richland Irrigation District, an irrigation district, being represented by their attorney, M. M. Moulton; the defendants Harry Forsyth, Treasurer of Benton County, Washington, and B. C. Pacius, Ira C. Hawley and H. S. Hughes, Commissioners of Benton County, Washington, being represented by their attorney, Charles L. Powell; and the intervenors, J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden and H. E. Davenport, individually and as Trustees, being represented by their attorneys, Preston, Thorgrimson & Turner; and the Court having heard the argument of coun- [fol. 34] sel for the parties hereto, and having read their briefs herein, and having been fully advised in the premises;

Now, therefore, it is hereby ordered, adjudged, and decreed that demurrers of defendants and intervenors to each and every separate cause of action stated in the Complaint be, and the same are hereby sustained.

Plaintiff having elected to stand upon his Complaint and not to plead further,

Now, therefore, it is further ordered, adjudged, and decreed that the Complaint heretofore filed in this cause, and each and every separate cause of action be, and the same is hereby dismissed.

It is further ordered, adjudged, and decreed that defendants and intervenors do have and recover their costs and disbursements made necessary herein.

To all of which plaintiff excepts, and his exceptions are duly allowed.

Done in open Court, this 10 day of September, 1931.

Matt L. Driscoll, Judge.

O. K.

Preston, Thorgrimson & Turner, Attys. for Intervenors. M. M. Moulton, Atty. for Richland Irrigation District and Directors. Charles L. Powell, Attorney for County Officers.

Presented by

Venables, Graham & Howe, by B. Goodwin.

[File endorsement omitted.]

[fol. 35] In Superior Court of Benton County

[Title omitted]

Notice of Appeal—Filed Sept. 10, 1931

To the defendants C. J. Barnett, W. A. Stockman, and W. C. McInnis, Directors of the Richland Irrigation District, an irrigation district and to Richland Irrigation District, an irrigation district, and to H. M. Moulton, their attorney:

To the defendants, Harry Forsyth, Treasurer of Benton County, Washington; B. C. Pacius, Ira C. Hawley, and H. S. Hughes, Commissioners of Benton County, Washington, and to Charles L. Powell, their attorney:

To J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden, and H. E. Davenport, individually and as trustees, intervenors, and to Preston, Thorgrimson & Turner, their attorneys:

You, and each of you, are hereby notified that the above named plaintiff, J. T. Roberts, hereby appeals to the Supreme Court of the State of Washington from the judgment entered in the above entitled cause on the 10th day of September, 1931, in favor of the defendants and the intervenors, and against the plaintiff, and from the whole thereof.

Venables, Graham & Howe, Albert Oleson, Attorneys for Plaintiff.

[fol. 36] Service of within notice admitted this 10th day of September, 1931.

M. M. Moulton, H. M. Moulton, Attorney for Defendant- Richland Irrigation *Irrigation* District and Directors of Richland Irrigation District. Charles L. Powell, Charles L. Powell, Attorney for Defendants Harry Forsyth, Treasurer of Benton County; B. J. Pacius, Ira C. Hawley, and H. S. Hughes, County Commissioners of Benton County. Preston, Thorgrimson & Turner, Preston, Thorgrimson & Turner, Attorneys for Intervenors, J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden, and H. E. Davenport, Individually and as Trustees.

[File endorsement omitted.]

[fol. 37] In Superior Court of Benton County

[Title omitted]

Order Fixing Amount of Bond on Appeal—Filed Sept. 10, 1931

Plaintiff having appealed to the Supreme Court of the State of Washington from the judgment made and entered in this cause, on the 10th day of September, 1931, and said plaintiff having applied to this Court for an order fixing the penalty of the bond to be given by said plaintiff under Section 1723 Remington's Compiled Statutes of Washington,

Now, therefore, it is hereby ordered that the penalty of said bond be given by said plaintiff in order to keep the injunction granted in the cause in full force and effect be, and the same is hereby fixed in the sum of $1000.00.

Done in open Court this 10th day of September, 1931.

Matt L. Driscoll, Judge.

O. K.

Preston, Thorgrimson & Turner, Attys. for Intervenors. M. M. Moulton, Atty. for Richland Irrigation District and Directors. Charles L. Powell, Attorney for County Officers.

Presented by

Venables, Graham & Howe, by B. Goodwin.

[File endorsement omitted.]

[fols. 38 & 39] Injunction and cost bond on appeal for $1,000, approved and filed September 10, 1931, omitted in printing.

[fol. 40] In Supreme Court of Washington

Excerpts from Printed Reply Brief of Appellant

Pages 1 and 2

"One question only is presented for consideration by the record in this case, to-wit:

"Has an irrigation district the power to levy assessments against the property of an individual landowner in an amount in substantial excess of the total benefits conferred

upon his land by the improvement for the cost of which the assessments are levied?

"It is the contention of the appellant that such a levy constitutes a taking of property without due process of law and is therefore in violation of the Fourteenth Amendment of the Constitution of the United States."

[fol. 41] IN SUPREME COURT OF WASHINGTON

No. 23513, Department One

J. T. ROBERTS, Appellant,

v.

RICHLAND IRRIGATION DISTRICT et al., Respondents; J. T. S. LYLE et al., Interveners

ORDER FOR HEARING EN BANC— Filed April 18, 1932

It is hereby ordered that the above-entitled cause be set for rehearing en banc at the May, 1932, Term of Court.

Dated this 18 day of April, 1932.

By the Court:

Tolman, Chief Justice.

[File endorsement omitted.]

[fol. 42] IN SUPREME COURT OF WASHINGTON

En Banc

No. 23513

J. T. ROBERTS, Appellant,

v.

RICHLAND IRRIGATION DISTRICT, an Irrigation District; C. J. Barnett, W. A. Stockman, and W. C. McInnis, Directors of the Richland Irrigation District, and Harry Forsyth, Treasurer of Benton County, Washington; B. A. Pacius, Ira C. Hawley, and H. S. Hughes, County Commissioners of Benton County, Washington, Respondents; J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden, and H. E. Davenport, Individually and as Trustees, Intervenors

OPINION—Filed Aug. 8, 1932

J. T. Roberts, on behalf of himself and others similarly situated, brought this action to enjoin the Richland Irrigation District and its directors and the commissioners and the treasurer of Benton county from levying, or spreading upon the record of the county, any assessment for the payment of the interest or the principal of the district's bonds (which were issued to pay for district improvements)

"against any particular tract of land within said district which will require the payment by the owner of said land of an amount in excess of the special benefit actually accruing to each particular tract of land by reason of the acquiring of water rights and making of improvements by the district, and the issuance of bonds as hereinabove referred to."

The intervenors (certain owners and holders of bonds issued by the district), who appeared individually and as trustees, and the defendants, interposed demurrers, which were sustained. The appeal is from the judgment of dismissal rendered upon the plaintiff's refusal to plead further.

The allegations of the complaint are, substantially, as follows: Appellant is the owner of forty acres of land in the Richland Irrigation District. That district was legally established and its organization approved and confirmed judicially in 1919. Thereafter, pursuant to statutory re- [fol. 43] quirements, the district issued bonds in the sum of $538,000.00 the proceeds from the sale of which were used to purchase additional water rights and to pay the cost of improvements essential to the irrigation of the lands within the district. The bonds bear interest at the rate of six per centum per annum payable semi-annually. By reason of the improvements made by the district the thirty-five irrigable acres of appellant's forty-acre tract were benefitted ten dollars an acre; that is, total benefits of three hundred and fifty dollars accrued to appellant's forty-acre tract by reason of the improvements made by the district. The ultimate amount of the liability of the appellant's land for assessments for bond purposes during the ten-year maturing period of the bonds is five hundred and sixty dollars (three hundred and fifty dollars plus interest of six

per centum per annum for ten years). For the years 1920 to 1929, inclusive, appellant paid an aggregate of $1,168.65 in assessments against his forty acres for the payment of interest and principal of the bonds described above. The directors of the district have made all preparations for, and are threatening to levy for the year 1930 an assessment of $757.53 against the lands of the appellant for the purpose of meeting interest and principal on the bonds. No part of the levy is made on account of, or with reference to, any special benefit accruing to the real property of the appellant. The assessment was levied for the purpose of creating a fund to take up or eliminate the deficiencies in the bond interest and bond retirement funds "due wholly or in part to a failure of certain landowners within the district to pay assessments which have heretofore or will hereafter be levied against lands in said district belonging to such other persons." The directors of the district informed the appellant that it is their fixed policy and that they propose to

"assess and re-assess all delinquencies which have heretofore or may hereafter accrue against the lands of this plaintiff and other lands in the district which continue to pay their assessments, without delinquency, until the lands of this plaintiff, and the lands of other persons who have and who shall hereafter pay the assessments levied will [fol. 44] create a fund sufficient to pay the entire outstanding indebtedness, and retire said bonds, both principal and interest, and that they propose to make such assessment without reference to the special benefits which have accrued to the real property of this plaintiff and any other landowners in the district who may continue to pay their assessments, but to be governed and determined in making said assessments solely by a consideration of the amount of money required to pay said indebtedness, * * *"

Is the annual assessment against each tract of land within an irrigation district for the payment of interest or the principal of bonds issued to pay the cost of irrigation district improvements limited to the maximum benefits accruing to the tract of land by reason of such improvements? That is the only question, which is not an open one in this state, presented by this appeal.

Counsel for appellant contend that the irrigation act requires that the maximum benefits received by such tract of land within the district from the issuance of the district bonds be determined annually; and that the benefits so ascertained establish the limit of the assessment against each tract of land for bond purposes. It is insisted that the statute, if it authorize the annual levy of assessments for bond purposes in excess of benefits received from such bond issue, is unconstitutional in that the taking of property without due process of law is thereby made possible.

No question is raised as to the legality of the formation of the district or of the inclusion of all lands within the district. Counsel concede that the aggregate benefits to the lands within the district equal the bonded indebtedness of the district and that the lands of the appellant have been benefited to some extent. It is not contended that, as between appellant's land and other privately owned land, the former is disproportionately assessed. The question, argue counsel for appellant, is:

"Assuming the legal organization of an irrigation district after notice and hearing upon the question of organization, boundaries, inclusions of land to be benefited and the total amount of benefits to all the lands within the district, is the individual landowner entitled to another hearing after due notice for the purpose of allocating to his land its just proportion of the benefits, and does the benefit thus allocated limit his liability to pay?"

[fol. 45] An irrigation district is a public corporation having some of the powers of a municipal corporation. The bond obligation is a general corporate obligation. The landowner is not entitled to a segregation of his share of the obligation at the time it is created, or at a later time. There is no provision in the irrigation act for a segregation at any time. The obligation is a general one and all lands within the district are subject to taxation for the payment of the entire obligation. State ex rel. Clancy v. Columbia Irrigation District, 121 Wash. 79, 208 Pac. 27; State ex rel. Wells v. Hartung, 150 Wash. 490, 274 Pac. 181.

In 1919 there was a due adjudication of the organization of the district determining the lands to be included within the district, the amount of bonds to be issued and the

interest to be paid thereon. It must be conclusively presumed, from that adjudication, as we said in State ex rel. Wells v. Hartung, supra,

"that the total benefits to the lands comprised in the district were then finally adjudicated. Each tract of land within the district then became generally liable for the payment of the bonds and interest."

The bond obligation was established. That liability was adjudicated to be within the limits of total benefits. Under the statute (sec. 7434, Rem. Comp. Stat.) all lands within the district became and will remain subject to specific assessment, in proportion to benefits, until the obligation is paid. The statute provides that irrigation district bonds and interest thereon shall be paid by revenue derived from an annual assessment upon the real property of the district,

"and all the real property in the district shall be and remain liable to be assessed for such payment until fully paid as hereinafter provided. Sec. 7434, supra.

The first tribunal determined at the beginning what lands would be benefited and whether the aggregate of benefits to those lands would equal the cost of irrigating them. By that tribunal the appellant was afforded a hearing. There was no invasion of appellant's constitutional rights. The statute provides for other hearings as frequently as there [fol. 46] will be occasion to allocate to appellant's lands specific amounts of benefit. The district board is required to make assessments annually for the purpose of raising sufficient money for maintenance, interest on bonds and principal of bonds. The sum required shall be apportioned among the benefited properties according to benefits. Sec. 7436, Rem. Comp. Stat. At the time of making the annual levy the board shall estimate the amount of all probable delinquencies on that levy and shall levy a sufficient amount to cover the same and a further amount sufficient to cover any deficit that may have resulted from delinquent assessments for any preceding year. Sec. 7440, Rem. Comp. Stat. There shall be a hearing on the assessment-roll, before the district directors acting as a board of equalization, and adequate notice shall be given to all concerned of the time and place of the hearing. The board shall hear and deter-

mine such objections to the assessment-roll as may come before it. Section 7438 and 7439, Rem. Comp. Stat. Patently there is no denial of the right of a landowner to a hearing upon the amount of his assessment.

The benefits to the appellant's lands are not only the benefits accruing by reason of the improvements for the payment of which the district issued bonds in the amount of five hundred and thirty-eight thousand dollars. Lands acquired by the district for unpaid assessments are assets of the district. An added benefit therefrom accrues to the district as a whole and to each landowner individually. Such benefit is a basis, as are the unpaid assessments on other lands within the district, for the secondary liability to which reference is made in State ex rel. Wells v. Hartung, supra:

"While appellants argue that interest cannot be considered as part of the benefits for which assessments may be levied, when any lands within the district have paid as much as the total benefits, yet every tract of land within the district became then liable, not only for the principal as the amount of the benefits, but for the interest. Since it was heretofore so judicially determined, the directors have no [fol. 47] option, under the statute quoted, but to levy assessments as the statutes specify.

"Nor have the land owners any right to question the assessments on the theory that they have paid assessments equalling the total amount of their benefits. The lands passing into the ownership of the district are not to be considered as liabilities, but assets. It may be that, during periods of depression in the market value of such lands, such as have prevailed for some years, the lands do not appear to be assets. Their temporary exclusion from liability to pay assessments is anticipated by the provisions of the sta-utes we have quoted. These obsercations apply to intervenors Schlagel and others similarly situated, as well as to the directors of the district, in the operation of the law.

"Appellants argue that the effect of the Clancy case, supra, has been overruled, modified, or repudiated in some of our later cases. Kadow v. Paul, supra, is cited to the effect that the liability of one owner in a diking district to make up the delinquency of another is secondary and not

primary; but that secondary liability, if it exists here, is covered by the fact that the delinquencies actually exist here and the statutes require them to be made up. State ex rel. Wells v. Hartung, supra.

"Supplemental assessments, in providing for the payment for such improvements, are recognized as a legitimate part of the proceeding necessary to raise the money and to pay bonds issued to meet the cost; and if, in the process of collection, it shall appear that some of the assessed land fails to pay the assessment and is appropriated and sold, the distribution of the deficit thus arising, to be included in another assessment, is only meeting the to be expected cost of the improvement. When the operation of the law works uniformly as against all parts of the assessment district, and results in a higher cost of the improvement, and an increased assessment on all the owners of land who have paid, it violates no constitutional right of theirs as long as their benefits continue respectively to exceed their individual assessments."

Kadow v. Paul, 274 U. S. 175.

Counsel for appellant call attention to the fact that Soeman v. Chestnut Valley Irr. District, 74 Mont. 111, 238 Pac. 879, cited by us in State ex rel. Wells v. Hartung, supra, was overruled by State ex rel. Malott v. Board of County Commissioners, 89 Mont. 37, 296 Pac. 1, in which the Supreme Court of Montana held that irrigation district bonds are not general obligations. We note, however, that the Montana Supreme Court states, as follows, that under the Washington statute, which differs materially from the Montana statute, such bonds are general obligations:

"Many of the decisions of other courts cited are not helpful in determin-g the matters submitted herein. This because upon investigation we find that in many instances the provisions of the statutes upon which such holdings are predicated are different from the provisions of our statute. The decisions of the Supreme Court of Washington in the cases of State ex rel. Clancy v. Columbia Irr. Dist., 121 Wash. 79, 208 Pac. 27, and State v. Hartung, 150 Wash. 590, 274 P. 181, are cited by relators. Both of these cases hold that the bonds of irrigation districts are general obliga-[fols. 47a-65] tions. But an examination of the Washing-

ton statute reveals that the law of that state contains the following provision relating to the levy of annual assessments: 'The Board shall also at the time of making the annual levy, estimate the amount of all probable delinquencies on said levy and shall thereupon levy a sufficient amount to cover the same and a further amount sufficient to cover any deficit that may have resulted from delinquent assessments for any preceding year.' Section 6473, Remington Code, 1915, as amended by Session Laws of 1921, p. 448. Our statute contains no such provision."

Our irrigation statute in no wise offends against the state Constitution or the United States Constitution. We have considered all of the authorities cited and deem it unnecessary to review them, as State ex rel. Wells v. Hartung, 150 Wash. 590, 274 Pac. 181, is determinative of the case at bar.

The judgment is affirmed.

Millard, J.

We concur:

Tolman, C. J.; Parker, J.; Mitchell, J.; Holcomb, J.; Main, J.; Beals, J.; Herman, J.

[fol. 66] In Supreme Court of Washington

[Title omitted]

Order Denying Rehearing—Filed Sept. 28, 1932

The court having considered the appellant's petition for a rehearing herein;

It is ordered that the said petition be and it hereby is denied.

Dated this 28 day of September, 1932.

By the Court:

Tolman, Chief Justice.

[File endorsement omitted.]

[fol. 67] IN SUPREME COURT OF WASHINGTON

No. 23513

J. T. ROBERTS, Appellant,

vs.

RICHLAND IRRIGATION DISTRICT et al., Respondents,

JUDGMENT—Sept. 28, 1932

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Benton County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 28th day of September, A. D. 1932, on motion of M. M. Moulton, Preston, Thorgrimson & Turner, of counsel for —— ——, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby affirmed, with costs; and that the said Richland Irrigation District et al. have and recover of and from the said J. T. Roberts and from Fidelity & Deposit Co. of Maryland, surety, the costs of this action, taxed and allowed at Eighty & 90/100 Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 68] IN SUPREME COURT OF WASHINGTON

[Title omitted]

Petition for Order Allowing Appeal, Assignments of Error, and Prayer for Reversal

PETITION FOR ORDER ALLOWING APPEAL

Considering himself aggrieved by the final decision of the Supreme Court of the State of Washington in the above entitled cause, the Plaintiff herein, J. T. Roberts, hereby prays that an order allowing appeal be issued herein, and for an order fixing the amount of the bond thereon.

Assignments of Error

The said J. T. Roberts assigns the following errors in [fol. 69] the record and proceedings in the said case:

(1) The Supreme Court of the State of Washington erred in affirming the order of the Superior Court for Benton County of the State of Washington sustaining demurrers of all adverse parties to Plaintiff's Complaint.

(2) The Supreme Court of the State of Washington erred in sustaining the judgment of the Superior Court for Benton County, of the State of Washington, dismissing Plaintiff's Complaint with costs upon his refusal to plead further after demurrers thereto of all adverse parties had been sustained.

(3) The Supreme Court of the State of Washington erred in overruling the contention of the Appellant that a State Statute, to wit: Irrigation District Law of the State of Washington, embodied in Sections 7417 to 7505, inclusive, pages 1701 to 1761, inclusive, Remington's Compiled Statutes of Washington 1922, Volume II, Title XLVIII, Chapter IV, as amended by Sections 7417 to 7505-5, inclusive, pages 973 to 999, inclusive, Remington's Compiled Statutes of Washington 1927 Supplement, Title XLVIII, Chapter IV, and as amended by Chapter 181 of the Session Laws of the State of Washington for 1929, Sections 1 to 3, inclusive, pages 469 to 474, inclusive, and by Chapter 185 of the Session Laws of the State of Washington for 1929, Sections 1 to 4, inclusive, pages 478 to 487, inclusive, as applied, was repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States, and in holding that the said statute as applied is valid and does not transgress the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(4) The Supreme Court of the State of Washington erred in holding that the Legislature of the State of Washington [fol. 70] has the power, by statutory enactment, to confer upon an irrigation district the power to levy local improvement assessments in substantial excess of and wholly without regard to benefits conferred upon the real property assessed, and that a statute expressly conferring such power

does not contravene the due process clause of the Fourteenth Amendment to the Constitution of the United States.

PRAYER FOR REVERSAL

For which errors the Plaintiff herein, J. T. Roberts, hereby prays that the judgment of the Supreme Court of the State of Washington, made and entered herein on the 28th day of September, 1932, be reversed and that a judgment, with costs, be rendered in favor of said Plaintiff.

Dated this 15 day of October, 1932.

Charles H. Farrell, Venables, Graham & Howe, Albert Olsen, Attorneys for Appellant.

[fol. 71] IN SUPREME COURT OF WASHINGTON

[Title omitted]

AFFIDAVIT OF SERVICE

COUNTY OF KING,
Western District of Washington,
Northern Division,
United States of America, ss:

Bernard Goodwin, first being duly sworn, on oath deposes and says:

That he is and at all times herein mentioned was a citizen of the United States, and a resident of the State of Washington, over the age of 21 years and competent to be a witness in the within entitled action.

That he is not a Plaintiff in the within action.

That on the 17 day of October, 1932, he personally served [fol. 72] the Petition for Order Allowing Appeal, the Assignments of Error, and Prayer for Reversal, hereto attached upon the Defendants and Appellees, B. J. Pacius, Ira C. Hawley and H. S. Hughes, County Commissioners of Benton County, Washington, and Harry Forsyth, Treasurer of Benton County, Washington, by then and there personally delivering and leaving with C. L. Powell, Attorney of Record for said Defendants and Appellees, one true

and correct copy of the said Petition for Order Allowing Appeal, Assignments of Error, and Prayer for Reversal, hereto attached.

Bernard Goodwin.

Subscribed and sworn to before me this 18 day of October, 1932. Thomas M. Green, Jr., Notary Public in and for the State of Washington, Residing at Seattle. (Notarial Seal.)

[fol. 73] IN SUPREME COURT OF WASHINGTON

[Title omitted]

AFFIDAVIT OF SERVICE

COUNTY OF KING,
Western District of Washington,
Northern Division,
United States of America, ss:

Bernard Goodwin, first being duly sworn, on oath deposes and says:

That he is and at all times herein mentioned was a citizen of the United States, and a resident of the State of Washington, over the age of 21 years and competent to be a witness in the within entitled action.

That he is not a Plaintiff in the within action.

That on the 18 day of October, 1932, he personally served the Petition for Order Allowing Appeal, the Assign-
[fol. 74] ments of Error, and Prayer for Reversal hereto attached upon the Intervenors and Appellees, J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden and H. E. Davenport, Individually and as Trustees, in the County of King, State of Washington, by then and there personally delivering and leaving with O. B. Thorgrimson of the firm of Preston, Thorgrimson & Turner, Attorneys of Record for said Intervenors and appellees, one true and correct copy of the said Petition for Order Allowing Appeal, As-

signments of Error, and Prayer for Reversal, hereto attached, in his office, Room 2000, Northern Life Tower, Seattle, Washington, County of King, State of Washington.

Bernard Goodwin.

Subscribed and sworn to before me this 18 day of October, 1932. Thomas M. Green, Jr., Notary Public in and for the State of Washington, Residing at Seattle. (Notarial Seal.)

[fol. 75] In Supreme Court of Washington

[Title omitted]

Affidavit of Service

County of King,
Western District of Washington,
Northern Division,
United States of America, ss:

Bernard Goodwin, first being duly sworn, on oath deposes and says:

That he is and at all times herein mentioned was a citizen of the United States, and a resident of the State of Washington, over the age of 21 years and competent to be a witness in the within entitled action.

That he is not a plaintiff in the within action.

That on the 17 day of October, 1932, he personally served the Petition for Order Allowing Appeal, the Assignments [fol. 76] of Error, and Prayer for Reversal, hereto attached upon the Defendants and Appellees, Richland Irrigation District, an irrigation district, C. J. Barnett, W. A. Stockman and W. C. McInnis, Directors of the Richland Irrigation District, an irrigation district, in Kennewick, Benton County, State of Washington, by then and there personally delivering and leaving with M. M. Moulton, Attorney of Record for said Defendants and Appellees, one true and correct copy of the said Petition for Order Allow-

ing Appeal, Assignments of Error and Prayer for Reversal, hereto attached.

Bernard Goodwin.

Subscribed and sworn to before me this 18 day of October, 1932. Thomas M. Green, Jr., Notary Public in and for the State of Washington, Residing at Seattle. (Notarial Seal.)

[fol. 77] In Supreme Court of Washington

[Title omitted]

Order Allowing Appeal

Upon consideration of the Petition for Appeal to the Supreme Court of the United States filed herein by J. T. Roberts, Appellant, and upon examination of the record herein, including Petition for Order Allowing Appeal, Assignments of Error, Prayer for Reversal, and Statement of Jurisdiction, as required by Rule 12 (1) of the Supreme Court of the United States, and desiring to give said petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter, and it appearing that said J. T. Roberts is the only party Plaintiff in said cause, and because in the record, proceedings, and judgment in the highest [fol. 78] Court of the State of Washington in which a decision could be had between J. T. Roberts, Appellant, and Richland Irrigation District, an irrigation district, C. J. Barnett, W. A. Stockman and W. C. McInnis, Directors of the Richland Irrigation District, and Harry Forsyth, Treasurer of Benton County, Washington, B. J. Pacius, Ira C. Hawley and H. S. Hughes, County Commissioners of Benton County, Washington, Defendants and Appellees; and J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden and H. E. Davenport, individually and as Trustees, Intervenors, and Appellees, and wherein was drawn in question the validity of a Statute of a State on the ground of it being repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States, and the decision was in favor of its valid-

ity, it appears that the said J. T. Roberts is entitled to have the judgment reviewed by the Supreme Court of the United States, and has presented a petition for Appeal and Assignments of Error and Prayer for Reversal to that end.

It is hereby ordered:

(I) That the Petition for Appeal be and the same is hereby allowed, and that a certified transcript of the record, proceedings and judgment aforesaid, and all things concerning the same, be transmitted to the Supreme Court of the United States at Washington, in the District of Columbia, within sixty (60) days from the date hereof, so that the said Supreme Court may examine and consider the same, and correct the errors therein, if any have occurred, and cause further to be done what is right and what is in accordance with the laws and customs of the United States, and

It is further ordered:

(II) That a bond on appeal, to act as cost bond and supersedes, be fixed in the sum of $2,000.00 as the law directs.

Dated at Olympia, Washington, this 15 day of October, 1932.

Warren W. Tolman, Chief Justice of the Supreme Court of the State of Washington.

Attest:

F. S. Guyot, Deputy Clerk. (Seal of Supreme Court.)

[fol. 79] In Supreme Court of Washington

[Title omitted]

Affidavit of Service

County of King,
Western District of Washington,
Northern Division,
United States of America, ss:

Bernard Goodwin, first being duly sworn, on oath deposes and says:

That he is and at all times herein mentioned was a citizen of the United States, and a resident of the State of Wash-

ington, over the age of 21 years and competent to be a witness in the within entitled action.

That he is not a Plaintiff in the within action.

That on the 17 day of October, 1932, he personally served [fol. 80] the Order Allowing Appeal hereto attached upon the Defendants and Appellees, Richland Irrigation District, an irrigation district, C. J. Barnett, W. A. Stockman and W. C. McInnis, Directors of the Richland Irrigation District, an irrigation district, in Kennewick, Benton County, State of Washington, by then and there personally delivering and leaving with M. M. Moulton, Attorney of Record for said Defendants and Appellees, one true and correct copy of the said Order Allowing Appeal hereto attached.

Bernard Goodwin.

Subscribed and sworn to before me this 18 day of October, 1932. Thomas M. Green, Jr., Notary Public in and for the State of Washington, Residing at Seattle. (Notarial Seal.)

[fol. 81] IN SUPREME COURT OF WASHINGTON

[Title omitted]

AFFIDAVIT OF SERVICE

COUNTY OF KING,
Western District of Washington,
Northern Division,
United States of America, ss:

Bernard Goodwin, first being duly sworn, on oath deposes and says:

That he is and at all times herein mentioned was a citizen of the United States, and a resident of the State of Washington, over the age of 21 years and competent to be a witness in the within entitled action.

That he is not a Plaintiff in the within action.

That on the 17 day of October, 1932, he personally served [fol. 82] the Order Allowing Appeal hereto attached upon the Defendants and Appellees, B. J. Pacius, Ira C. Hawley

and H. S. Hughes, County Commissioners of Benton County, Washington, and Harry Forsyth, Treasurer of Benton County, Washington, by then and there personally delivering and leaving with C. L. Powell, Attorney of Record for said Defendants and Appellees, one true and correct copy of the said Order Allowing Appeal hereto attached.

Bernard Goodwin.

Subscribed and sworn to before me this 18 day of October, 1932. Thomas M. Green, Jr., Notary Public in and for the State of Washington, Residing at Seattle. (Notarial Seal.)

[fol. 83] IN SUPREME COURT OF WASHINGTON

[Title omitted]

AFFIDAVIT OF SERVICE

COUNTY OF KING,
Western District of Washington,
Northern Division,
United States of America, ss:

Bernard Goodwin, first being duly sworn, on oath deposes and says:

That he is and at all times herein mentioned was a citizen of the United States, and a resident of the State of Washington, over the age of 21 years and competent to be a witness in the within entitled action.

That he is not a Plaintiff in the within action.

That on the 18 day of October, 1932, he personally [fol. 84] served the Order Allowing Appeal hereto attached upon the Intervenors and Appellees, J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden and H. E. Davenport, Individually and as Trustees, in the County of King, State of Washington, by then and there personally delivering and leaving with O. B. Thorgrimson of the firm of Preston, Thorgrimson & Turner, Attorneys of Record for said Intervenors and Appellees, one true and correct

copy of the said Order Allowing Appeal hereto attached, in his office, Room 2000, Northern Life Tower, Seattle, Washington, County of King, State of Washington.

Bernard Goodwin.

Subscribed and sworn to before me this 18 day of October, 1932. Thomas M. Green, Jr., Notary Public in and for the State of Washington, Residing at Seattle. (Notarial Seal.)

[fol. 85] In Supreme Court of Washington

[Title omitted]

Certificate of Chief Justice of the Supreme Court of the State of Washington re Finality of Judgment

I, Warren W. Tolman, Chief Justice of the Supreme Court of the State of Washington, hereby certify:

That the Supreme Court of the State of Washington is the highest Court of said State in which a decision in the above entitled cause could be had, and

That upon affirmance by said Supreme Court, the judgment in said cause became final, leaving nothing to be done by the Court below but to execute the judgment already rendered, which disposes of all elements of controversy.

Warren W. Tolman, Chief Justice of the Supreme Court of the State of Washington.

Dated this 15 day of October, 1932.

Attest:

F. S. Guyot, Deputy Clerk. (Seal of the Supreme Court of the State of Washington.)

[fol. 86] We hereby acknowledge service of the foregoing Certificate of Chief Justice of the Supreme Court of the State of Washington re Finality of Judgment, and the receipt of a true copy thereof, this 18 day of October, 1932.

Preston, Thorgrimson & Turner, Attorneys for J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden, and H. E. Davenport, Individually and as Trustees, Intervenors and Appellees.

This 17th day of October, 1932.

M. M. Moulton, Attorney for Richland Irrigation District, an Irrigation District; C. J. Barnett, W. A. Stockman, and W. C. McInnis, Directors of Richland Irrigation District, an Irrigation District, Defendants and Appellees. Charles L. Powell, Attorney for B. J. Pacius, Ira C. Hawley, and H. S. Hughes, County Commissioners of Benton County, Washington, and Harry Forsyth, Treasurer of Benton County, Washington, Defendants and Appellees.

[fol. 87] In Supreme Court of Washington

[Title omitted]

Certificate of Chief Justice of the Supreme Court of the State of Washington re Consideration of Federal Constitutional Question

I, Warren W. Tolman, Chief Justice of the Supreme Court of the State of Washington, hereby certify

That in the above entitled cause the question whether the irrigation district law of the State of Washington embodied in Sections 7417-7505, inclusive, pages 1710 to 1761, inclusive, Remington's Compiled Statutes of Washington 1922, Volume II, Title XLVIII, Chapter IV, and as amended by Sections 7417 to 7505-5, inclusive, pages 973 to 999, inclusive, Remington's Compiled Statutes of Washington 1927 Supplement, Title XLVIII, Chapter IV, and as [fols. 88-120] amended by Chapter 181 of the Session Laws of the State of Washington for 1929, Sections 1 to 3, inclusive, pages 469 to 474, inclusive, and by Chapter 185 of the Session Laws of the State of Washington for 1929, Sections 1 to 40, inclusive, pages 478 to 487, inclusive, and its application in this case, is repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States, providing that no State shall deprive any person of life, liberty or property without due process of law, was considered and passed upon by this Court.

Dated this 15 day of October, 1932.

Warren W. Tolman, Chief Justice of the Supreme Court of the State of Washington.

Attest:

F. S. Guyot, Deputy Clerk. (Seal of the Supreme Court of the State of Washington.)

We hereby acknowledge service of the foregoing Certificate of Chief Justice of the Supreme Court of the State of Washington re Consideration of Federal Constitutional Question, and the receipt of a true copy thereof, this 18 day of October, 1932.

Preston, Thorgrimson & Turner, Attorneys for J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden, and H. E. Davenport, Individually and as Trustees, Intervenors and Appellees.

This 17th day of Oct., 1932.

M. M. Moulton, Attorney for Richland Irrigation District, an Irrigation District; C. J. Barnett, W. A. Stockman, and W. C. McInnis, Directors of Richland Irrigation District, an Irrigation District, Defendants and Appellees. Charles L. Powell, Attorney for B. J. Pacius, Ira C. Hawley, and H. S. Hughes, County Commissioners of Benton County, Washington, and Harry Forsyth, Treasurer of Benton County, Washington, Defendants and Appellees.

[fols. 121 & 122] Supersedeas bond on appeal for $2,000, approved October 15, 1932, omitted in printing.

[fol. 123] Order approving bond omitted in printing.

[fols. 124-129] Affidavits of service of order approving bond omitted in printing.

[fols. 130 & 131] Citation, in usual form, showing service on M. M. Moulton et al., filed October 18, 1932, omitted in printing.

[fol. 132] IN SUPREME COURT OF WASHINGTON

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Supreme Court of the State of Washington:

Please prepare a transcript of the record in the above entitled cause to be filed in the office of the Clerk of the Supreme Court of the United States at Washington, District of Columbia, pursuant to order allowing appeal heretofore issued in said cause, and include in said transcript the following pleadings, proceedings and papers on file herein and from the "Transcript of Record" filed herein from the Superior Court for Benton County (Cause No. 5607 in said Superior Court), to-wit:

1. Summons and Complaint with proof of service.
2. Motion for restraining order and order to show cause.
3. Restraining order and Order to Show Cause.

[fol. 133] 4. Restraining Order Bond.

5. Stipulation for Extension of Restraining Order.
6. Order extending Restraining Order.
7. Stipulation and Order modifying Restraining Order.
8. Stipulation and Order of Intervention.
9. Demurrer to Complaint by Intervenors, J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden and H. E. Davenport, Individually and as Trustees.
10. Demurrer to Complaint by Defendants, Richland Irrigation District, an irrigation district, C. J. Barnett, W. A. Stockman and W. C. McInnis, Directors of the Richland Irrigation District.
11. Demurrer to Complaint by Defendants, B. J. Pacius, Ira C. Hawley and H. S. Hughes, County Commissioners of Benton County, Washington, and Harry Forsyth, Treasurer of Benton County, Washington.
12. Opinion of the Trial Court, letter dated the 11th day of September, 1931.
13. Order sustaining Demurrers and Judgment of Superior Court dismissing cause and taxing costs.
14. Notice of Appeal.
15. Order fixing amount of bond on appeal.

16. Injunction and cost bond on appeal.

17. (Excerpts from printed reply brief of Appellant—Pages 1 & 2) "One question only is presented for consideration by the record in this case, to-wit: Has an irrigation district the power to levy assessments against the property of an individual landowner in an amount in substantial excess of the total benefits conferred upon his land by the improvement for the cost of which the assessments are levied? "It is the contention of the Appellant that such a levy constitutes a taking of property without due process of law and is therefore in violation of the Fourteenth Amendment of the constitution of the United States."

17-a. Order for Hearing En Banc.

18. Opinion of the Supreme Court of the State of Washington, dated the 8th day of August, 1932.

19. Petition for re-hearing.

20. Order denying Petition for re-hearing in the Supreme Court of the State of Washington, dated September 28th, [fol. 134] 1932.

21. Judgment of the Supreme Court of the State of Washington, entered September 28th, 1932.

22. Remittitur.

23. Certificate of the Chief Justice of the Supreme Court of the State of Washington, re finality of judgment herein.

24. Certificate of the Chief Justice of the Supreme Court of the State of Washington, re consideration by the Supreme Court of the State of Washington of Federal Constitutional question.

25. Petition for Order Granting Appeal, Assignments of Error, and Prayer for Reversal (Original), and Proof of Service thereof. (Original)

26. Order Granting Appeal (Original) and Proof of Service thereof. (Original)

27. Statement as to Jurisdiction of the Supreme Court of the United States required by Rule 12 (1) of that Court (Original), and Proof of Service thereof. (Original)

28. Statement directing attention to provisions of Paragraph 12 (3) of the rules of the Supreme Court of the United States, as required by Paragraph 2 of said rules, and Proof of Service thereof. (Original)

29. Cost and Supersedeas Bond, and approval thereof. (Original)

30. Order approving Cost and Supersedeas Bond (Original), and Proof of Service thereof (Original).

31. Citation of Appeal, with Proof of Service thereof (Original).

32. This Præcipe with Proof of Service thereof (Original).

Said transcript to be prepared as required by law, and the rules of the Supreme Court of the State of Washington and the Supreme Court of the United States, and to be filed in the Office of the Clerk of the Supreme Court of the United States, in the City of Washington, District of Columbia, for use on appeal herein.

Dated at Seattle, Washington, this 17 day of October, 1932.

Charles H. Farrell, Venables, Graham & Howe, Albert Olsen, Attorneys for Appellant.

[fol. 135] We hereby acknowledge service of the foregoing Præcipe for Transcript of Record, and the receipt of true copies thereof, this 18 day of October, 1932.

Preston, Thorgrimson & Turner, Attorneys for J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden, and H. E. Davenport, Individually and as Trustees, Intervenors and Appellees.

This 17th day of October, 1932.

M. M. Moulton, Attorney for Richland Irrigation District, an Irrigation District; C. J. Barnett, W. A. Stockman, and W. C. McInnis, Directors of Richland Irrigation District, and Irrigation District, Defendants and Appellees. Charles L. Powell, Attorney for B. J. Pacius, Ira C. Hawley, and H. S. Hughes, County Commissioners of Benton County, Washington, and Harry Forsyth, Treasurer of Benton County, Washington, Defendants and Appellees.

[fol. 136] IN SUPREME COURT OF WASHINGTON

EXCERPTS FROM BRIEFS REQUESTED BY PRÆCIPE FOR ADDITIONAL TRANSCRIPT OF RECORD

1. Extract from appellant's brief, p. 94, as follows:

"No question is raised as to the legality of the formation of this district or of the inclusion of all lands within the district, or as to the fact that the aggregate benefits equalled the bonded debt, nor were these questions raised by the issues in the Hartung case. The question that is raised now is this:

Assuming the legal organization of an irrigation district after notice and hearing upon the question of organization, boundaries, inclusions of land to be benefited and total amount of benefits to all the lands within the district, is the individual landowner entitled to another hearing after due notice for the purpose of allocating to his land its just proportion of the benefits, and does the benefit thus allocated limit his liability to pay?"

2. Extract from p. 7 of respondents' irrigation district brief, as follows:

"This district contained approximately 10,000 acres. The bonded indebtedness is $538,000. Under the rule announced in the Hartung case it is conclusively presumed that the benefits aggregate at least $538,000. Following the presumption and the law it became the duty of the directors to apportion the aggregate bonded indebtedness against all the land according to their respective benefits. Let us assume that this was done and that against each tract of land in the district was lodged its proper proportion of the indebtedness. In the aggregate that would have equal-ed the indebtedness."

3. Extracts from interveners' brief herein, as follows: pp. 30 to 35, inclusive:

"Plaintiff alleges in his complaint that the full amount of the money procured from the bond issue was expended in the construction of the improvements. The complaint does not allege, nor does counsel contend, that the total amount of the benefits do not equal the amount of the bond

issue. Appellant does not contend that as between him and other privately owned land his land is disproportionately assessed. Appellant only alleges that his land is assessed more than the total benefits, and by benefits he evidently refers to the benefits arising from the physical improvement itself, and not the added benefit accruing to the district as a whole and to each land owner individually by virtue of the acquisition of lands by the district for unpaid assessments and the unpaid assessments on the other lands themselves, both of which elements form the basis for the secondary liability referred to in the Hartung case and in the following cases cited in our brief in that case.

[fol. 137] Cosman v. Chestnut Valley Irrigation District, 238 Pac. 879 (Mont.) 40 A. L. R. 1344, 1378, 1349;

Stevens v. Melville, 175 Pac. (Utah) 602, 605;

Morris v. Montezuma Irrigation District, 248 Fed. 369;

Orr v. Allen, 245 Fed. 486, approved in Kadow v. Paul, 134 Wash. 553.

If he is correct as to his land then it necessarily follows that as no claim is made that his land has been assessed disproportionately, that all the land in the district has already been assessed for more than maximum benefits received, and the net result is that no part of the entire principal of $538,000 of such bonds can be collected.

"On page 94 of the appellant's brief counsel says:

'No question is raised as to the legality of the formation of this district or of the inclusion of all lands within the district, or as to the fact that the aggregate benefits equalled the bonded debt, nor were these questions raised by the issues in the Hartung case. The question that is raised now is this:

'Assuming the legal organization of an irrigation district after notice and hearing upon the question of organization, boundaries, inclusions of land to be benefited and total amount of benefits to all the lands within the district, is the individual landowner entitled to another hearing after due notice for the purpose of allocating to his land its just proportion of the benefits, and does the benefit thus allocated limit his liability to pay?'

"Counsel then contends upon page 95 that this adjudication of the total benefits is not an adjudication and allocation of individual benefits, and from this proposition counsel argues that the decisions above cited are unsound. We cannot agree with counsel. The decisions of this court do not deny the right of a landowner to a hearing upon the amount of his assessment. But the adjudication of the total benefits would amount to nothing and be wholly worthless if it were not to be used as a basis for the subsequent assessments. If the position taken by counsel in this case were sustained the adjudication of total benefits would have no force whatever. Each landowner could come in, and disregarding the adjudication of total benefits, litigate anew the amount of benefit to his land as a new proposition, and ultimately the courts might hold upon such new litigation that the total benefits as adjudged in the many separate landowners' cases amount to but a small part of the total benefits fixed by the adjudication for the bond issue. There is only one way to give force to this first adjudication of total benefits and that is in any attack upon the assessment by a landowner to start as a foundation with the proposition that the total benefits equal the bond issue. This leaves open only one question, and that is as to whether or not the assessments made are proper- [fol. 138] tionate as between the private land owners. If they are proportionate then their aggregate must equal the total amount of the bond issue. If not, the adjudication as to total benefits amounts to nothing. It is therefore necessary for a plaintiff attacking his assessment to allege that his assessment is disproportionate as between his land and other privately owned lands, unless, of course, his allegations show that the total assessments exceed the total bond issue.

"All the assessments heretofore paid by appellant have been for interest on the bonds. Our contention in our brief in the Hartung case was that interest is not to be included in the computation of maximum assessments supported by the benefit conferred by the original improvement, but it supported by the added benefit of the extension of time allowed for payment of the original cost. This contention was sustained by the supreme court, and the provisions of the irrigation law providing assessments for interest held valid, though without discussing the reasons urged in its support."

P. 36:

"If the contention of appellant here is sustained no part of the principal of the bonds in the Richland Irrigation District will ever be paid. All owners will claim that they have paid enough interest to equal their total benefits, and the court will under the authority of this case, if appellant wins, enjoin all further assessments against those lands."

4. Extract from pp. 41, 42 and 43 of appellant's reply brief, as follows:

"It is true as counsel suggest, that we have not contended that our land is disproportionately assessed. For the purpose of discussion let us assume that the assessment is levied in proportion to the benefits to each individual tract as determined by the judgment of the Board. We do not question the right of the Board to levy an assessment so determined so long as the aggregate of the successive assessments do not substantially exceed the total amount of our maxiumu- benefit. It is true that we only allege that our land is assessed more than the total benefits. That is the whole question in this case. Does the Board have the right to levy successive assessments in excess of our total benefits? This is the question to the consideration of which we devoted 112 pages of our opening brief. This is the question which counsel declined to discuss upon its merits. It is the only question in the case. The fact that the assessments are levied proportionately does not make them legal if the total amount of them exceeds the benefits. There are two (2) requirements for a legal assessment: (a) uniformity as to all parts of the assessment district; and (b) limitation of the total assessments against a specific tract to the amount of the total benefits conferred thereon."

[fols. 139-142] In Supreme Court of Washington

[Title omitted]

Præcipe for Additional Transcript of Record

To the Clerk of the Supreme Court of the State of Washington:

Please prepare, as an addition to the transcript of record in the above entitled cause to be filed in the office of the

clerk of the Supreme Court of the United States, the following portion of the record in the above entitled cause not included in the præcipe for transcript made by the appellant:

Excerpts from briefs omitted here; printed side page 136 ante.

[fols. 143-153] Preston, Thorgrimson & Turner, Attorneys for Interveners and Appellees.

We hereby acknowledge service of the foregoing Præcipe for additional transcript of record, and the receipt of true copies thereof, this 26 day of October, 1932.

Venables, Graham & Howe, Albert Olsen, Attorneys for Appellant. —— ——, Attorney for Richland Irrigation District, an Irrigation District; C. J. Barnett, W. A. Stockman, and W. C. McInnis, Directors of Richland Irrigation District, an Irrigation District, Defendants and Appellees. —— ——, Attorney for B. J. Pacius, Ira C. Hawley, and H. S. Hughes, County Commissioners of Benton County, Washington, and Harry Forsyth, Treasurer of Benton County, Washington, Defendants and Appellees.

[fol. 154] In Supreme Court of the United States

Appellant's Statement of Points to be Relied Upon and Designation of Parts of the Record to be Printed—Filed Nov. 19, 1932

Comes now the Appellant, J. T. Roberts, and states that he adopts his Assignments of Error as his Statement of Points to be Relied Upon in this case.

And said Appellant, J. T. Roberts, further states that only the following parts of the record, as filed in the above entitled Court, need be printed by the Clerk of said Court for the consideration of this case:

[fol. 155]	Title of paper	Record page
1.	Complaint	1
2.	Restraining Order and Order to Show Cause	13
3.	Restraining Order Bond	15
4.	Stipulation for Order Modifying Restraining Order	21
5.	Order Modifying Restraining Order	25
6.	Stipulation for Order allowing Intervention	27
7.	Order allowing Intervention	28
8.	Demurrer to Complaint by Interveners, J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden and H. E. Davenport, Individually and as Trustees	29
9.	Demurrer to Complaint by Defendants, Richland Irrigation District, an irrigation district, C. J. Barnett, W. A. Stockman and W. C. McInnis, Directors of the Richland Irrigation District, an irrigation district	30
10.	Demurrer to Complaint by Defendants, B. J. Pacius, Ira C. Hawley and H. S. Hughes, County Commissioners of Benton County, Washington, and Harry Forsyth, Treasurer of Benton County, Washington	31
11.	Opinion of the Trial Court, letter dated the 19th day of June, 1931	32
12.	Order Sustaining Demurrers and Judgment of Superior Court dismissing Complaint and taxing costs	33
13.	Notice of Appeal	35
14.	Order Fixing Amount of Bond on Appeal	37
15.	Injunction and Cost Bond on Appeal	38
16.	(Excerpts from printed reply brief of Appellant—Pages 1 & 2:) "One question only is presented for consideration by the record in this case, to-wit: Has an irrigation district the power to levy assessments against the property of an individual landowner in an amount in substantial excess of the total benefits conferred upon his land by the improvement for the cost of which the assessments are levied? It is the contention of the Appellant that such a levy constitutes a taking [fol. 156] of property without due process of	

Title of paper	Record page
law and is therefore in violation of the Fourteenth Amendment of the Constitution of the United States"	40
17. Order for Hearing En Banc	41
18. Opinion of the Supreme Court of the State of Washington, filed the 8th day of August, 1932	42
19. Order denying Petition for Rehearing in the Supreme Court of the State of Washington, signed and filed September 28, 1932	66
20. Judgment of the Supreme Court of the State of Washington entered September 28, 1932	67
21. Petition for Order Allowing Appeal, Assignments of Error, and Prayer for Reversal	68
22. Proof of Service of Petition for Order Allowing Appeal, Assignments of Error and Prayer for Reversal	71, 73, 75
23. Order Allowing Appeal	77
24. Proof of Service of Order Allowing Appeal	79, 81, 83
25. Certificate of the Chief Justice of the Supreme Court of the State of Washington re Finality of Judgment	85
26. Proof of Service of Certificate of the Chief Justice of the Supreme Court of the State of Washington re Finality of Judgment	86
27. Certificate of the Chief Justice of the Supreme Court of the State of Washington re Consideration of Federal Constitutional Question	87
28. Proof of Service of Certificate of the Chief Justice of the Supreme Court of the State of Washington re Consideration of Federal Constitutional Question	88
29. Statement as to Jurisdiction	89
30. Proof of Service of Statement as to Jurisdiction	113, 115, 117
31. Statement Required by Paragraph 2 of Rule 12 of the Revised Rules of the Supreme Court of the United States	119
32. Proof of Service of Statement Required by Paragraph 2 of Rule 12 of the Revised Rules of the Supreme Court of the United [fol. 157] States	120
33. Appeal and Supersedeas Bond	121

Title of paper	Record page
34. Order Approving Bond	123
35. Proof of Service of Order Approving Bond	124, 126, 128
36. Citation of Appeal	130
37. Proof of Service of Citation of Appeal	131
38. Præcipe for Transcript of Record	132
39. Proof of Service of Præcipe for Transcript of Record	135

Dated this 14 day of November, 1932.

Charles H. Farrell, Venables, Graham & Howe, Albert Olsen, Attorneys for Appellant J. T. Roberts.

[fol. 158] We hereby acknowledge service of the foregoing appellant's statement of points to be relied upon and designation of parts of the record to be printed, and the receipt of a true copy thereof this 14 day of November, 1932.

Preston, Thorgrimson & Turner, Attorneys for J. T. S. Lyle, Dix Rowland, Charles Heath, T. H. Bowden, and H. E. Davenport, Individually and as Trustees, Interveners and Appellees.

This 14 day of November, 1932.

M. M. Moulton, Attorney for Richland Irrigation District, an Irrigation District; C. J. Barnett, W. A. Stockman, and W. C. McInnis, Directors of Richland Irrigation District, an Irrigation District, Defendants and Appellees. Charles L. Powell, Attorney for B. J. Pacius, Ira C. Hawley, and H. S. Hughes, County Commissioners of Benton County, Washington, and Harry Forsyth, Treasurer of Benton County, Washington, Defendants and Appellees.

[fol. 158½] [File endorsement omitted.]

[fol. 159] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1932

APPELLEES' DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed Nov. 19, 1932

Come now the above named interveners, appellees herein, and designate as matter which they think material the following additional parts of the record to be printed by the clerk of the above entitled court:

1. Excerpts from briefs requested by præcipe for additional transcript of the record (Tr. pp. 136 to 138, inc.).

2. Such part of the præcipe for additional transcript of the record (Tr. 139) as shows that appellees requested that there be included in the record the foregoing excerpts from briefs.

3. Statement against jurisdiction (Tr. 144).

[fol. 160] Dated this 14th day of November, 1932.

Harold Preston, O. D. Thorgrimson, L. T. Turner,
Preston, Thorgrimson & Turner, Attorneys for Appellees.

Received copy of foregoing statement of additional matter to be printed this 14th day of November, 1932.

Venables, Graham & Howe, Attorneys for Appellant.
Albert Olsen, Charles H. Farrell.

[fol. 161] [File endorsement omitted.]

Endorsed on cover: File No. 37,213. Washington Supreme Court. Term No. 516. J. T. Roberts, appellant, vs. Richland Irrigation District et al., etc. Filed November 19, 1932. File No. 37,213.